

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DIAN GARNER,)	
)	
Plaintiff,)	Case No.: 4:14-CV-00200-CEJ
)	
v.)	
)	
DENNIS J. BARTON III,)	
CONSUMER ADJUSTMENT)	
COMPANY, INC., and)	
ROGER WEISS,)	
)	
Defendants.)	

**DEFENDANTS CONSUMER ADJUSTMENT COMPANY, INC. AND
ROGER WEISS’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

COME NOW Defendants, Consumer Adjustment Company, Inc. and Roger Weiss (“Defendants”), and pursuant to Federal Rules of Civil Procedure 12(b)(6), respectfully move this Court to dismiss all claims asserted against them in Plaintiff’s Complaint. In support of their Motion, Defendants state as follows:

1. Plaintiff filed a three-count Complaint against Defendants on February 4, 2014. In Count I of her Complaint, Plaintiff alleges a violation of the Fair Debt Collection Practices Act (“FDCPA”); in Count II, Plaintiff alleges abuse of process; and in Count III, she alleges conversion.
2. Defendants now move to dismiss Counts I, II, and III of Plaintiff’s Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.
3. Count I of Plaintiff’s Complaint should be dismissed because bringing a collection lawsuit in the creditor’s name does not violate the FDCPA and Defendants cannot be held vicariously liable for the purported misrepresentation of an independent process server.

Moreover, Plaintiff's requested relief is not contemplated by the FDCPA and violates the *Rooker-Feldman* doctrine. Finally, Plaintiff has failed to plausibly plead the individual liability of Defendant Roger Weiss.

4. Count II should be dismissed because Plaintiff's sole basis for abuse of process is a purported FDCPA violation and "abuse of process under Missouri law does not contemplate the expansive protection afforded by the [Fair Debt Collection Practices] Act." *Hinten v. Midland Funding, LLC*, No. 2:13 CV 54 DDN, 2013 WL 5739035, at *10 (E.D. Mo. Oct. 22, 2013). Plaintiff's claim must fail as a matter of law.
5. Likewise, for Count III, Plaintiff cannot state a claim for conversion where the thing purportedly converted is money, which is not a specific chattel. *Koger v. Hartford Life Ins. Co.*, 28 S.W.3d 405, 415 (Mo. Ct. App. 2000) (emphasis added); *see also Gadberry v. Bird*, 191 S.W.3d 673, 675 (Mo. Ct. App. 2006) ("[C]onversion lies only for a specific chattel which has been wrongfully converted."). Her claim fails as a matter of law.
6. As set forth more fully in the Defendants' Memorandum in Support their Motion to Dismiss Plaintiff's Complaint filed concurrently herewith, and incorporated herein by reference, this Court should dismiss Counts I, II, and III of Plaintiff's Complaint.
7. Furthermore, because Plaintiff's claims are clearly without merit and are nothing more than an effort to harass Defendants, especially as to Defendant Weiss, Defendant Roger Weiss requests his attorneys' fees in defending against Plaintiff's Complaint pursuant to Section 1692k(a)(3) of the FDCPA.

WHEREFORE, Defendants request that this Court dismiss Plaintiff's claims against them and to grant such other relief as the Court deems fair and proper, including their attorneys' fees, expenses and costs incurred in defending this action.

Respectfully submitted,

LEWIS, RICE & FINGERSH, L.C.

By: /s/ Sarah A. Milunski

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 18th day of April, 2014 a true copy hereof was electronically filed with the Clerk of the Court using the CM/ECF system, to be served by operation of the Court's electronic filing system to counsel of record as set forth below:

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